

**Dillard, Jacqueline (DKW Comms)**

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**From:** Perlmutter, Shira  
**Sent:** Wednesday, October 02, 2013 3:38 PM  
**To:** Dillard, Jacqueline (DKW Comms)  
**Subject:** FW: U.S. Leadership in WIPO VIP Treaty Negotiations

**Shira Perlmutter**

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**From:** Burns, Thaddeus J (GE, Corporate) [mailto:thaddeus.burns@ge.com]  
**Sent:** Thursday, May 02, 2013 6:28 AM  
**To:** King, Betty  
**Cc:** Perlmutter, Shira; Reves, J. Todd; Ferriter, Karin L.; Bhatia, Karan (GE Corporate, GE Officer); Horton, Carl (GE Corporate)  
**Subject:** U.S. Leadership in WIPO VIP Treaty Negotiations

Dear Ambassador King,

As you know, a WIPO Diplomatic Conference has been scheduled for 17-28 June 2013 in Morocco. At this meeting, WIPO Members plan to finalize a treaty intended to improve access by the visually-impaired and persons with print disabilities to copyrighted works ("VIP Treaty").

Improving access to copyrighted works by persons who are visually impaired or who have print disabilities is a worthy objective. We support, in general, efforts by the Administration and by the international community to find effective solutions to the challenges faced by these groups. In particular, we support conclusion of a balanced and workable international agreement in favor of the visually-impaired, provided it respects the fundamental ownership rights of those who create copyright-protected works while also re-affirming the copyright limitations and exceptions (L/E) that have worked for more than a century to balance stakeholders' interests.

At this point in time I wanted to alert you before we meet this week with USG agencies in Washington: US industry is very concerned about the direction the negotiations have taken, and the likelihood of a premature and incomplete outcome in Morocco in June.

The treaty as currently drafted does not reflect the appropriate balance between copyright protections, on the one hand, and L/E to copyright protection, on the other hand. The international copyright infrastructure is fundamentally based on such balance. By casting it aside, the VIP Treaty could set a very harmful precedent, affecting broader debates about global IPR rules at the UNFCCC, WTO, WHO, WIPO, and elsewhere. It is crucial that the VIP Treaty be consistent with existing international IPR agreements, including the Berne Convention, the WIPO Copyright Treaty, and the WTO TRIPS Agreement.

The current VIP Treaty draft text does not adequately balance protections and L/E:

- It isolates L/E from the basic copyright protections to which they pertain even though many of the eventual signatory countries do not provide any copyright protections whatsoever. This would create an unworkable and counterproductive outcome in relation to certain jurisdictions, where E/L to copyright would be instituted in a vacuum;

- It does not incorporate the so-called “three-step” test which is enshrined in all of the key global copyright agreements and which has proven over time to be a flexible, effective instrument for balancing stakeholders’ interests.<sup>[1]</sup> The test provides that countries may permit exceptions to the protection of copyrighted works but only (i) in “special cases”; (ii) which “do not conflict with a normal exploitation of the work”; and (iii) do not “unreasonably prejudice the legitimate interests of the right holder”;
- The VIP Treaty, in its current form, is strongly supported and advanced by the same group of NGOs and advanced emerging economy countries that pursue a general IPR-weakening agenda at WIPO and other international forums. As currently drafted, the VIP Treaty would create a harmful precedent that could be relied upon by IPR detractors in other talks, including at UNFCCC, WHO, and WTO.

The current state of VIP Treaty negotiations, together with WIPO’s broader work program emphasizing L/E to IP rights, threatens to upset the fundamental principles on which the U.S. and global IP systems are based. Your strong support and leadership have been critical in addressing threats to advanced manufacturing, innovation, technological advancement, and IPR, and we are grateful for your efforts within WIPO, particularly over the last several weeks. Continued U.S. leadership will be needed to ensure the VIP Treaty addresses the challenges faced by the visually-impaired without playing into the hands of those pushing for global IPR weakening.

It is unlikely that all of the flaws in the current VIP Treaty text can be addressed between now and the June Diplomatic Conference. As such, the only option at this time may be to postpone the Conference and to continue negotiations until an effective and acceptable outcome can be achieved. I understand that there is a meeting taking place next week to be convened by the Mexican Ambassador. Our coalition of trade associations and companies are presently reaching out to other key negotiators including the EU, Germany, Australia, Japan, Mexico, Brazil and others to make this point in the hopes that Ambassadors in Geneva might prevail on Francis Gurry to allow negotiations to continue towards a more workable text to be agreed upon in a diplomatic conference convened at a later date.

We fully support better access to print works for the visually impaired and for persons with print disabilities. But any treaty to accomplish this goal must be done right. An unworkable treaty that creates major gaps in the existing, delicately balanced global IPR framework is not in the interest of the United States. Moreover, because such an outcome would face uncertain ratification and implementation prospects in many WIPO Members, it would not be in the interest of the visually impaired either.

I want to take this opportunity to personally thank you for your passionate leadership on behalf of the US creative and innovative communities and indeed all US WIPO stakeholders.

Warm regards,

Thaddeus

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<sup>[1]</sup> i.e., the Berne Convention, TRIPS Agreement, and WIPO Copyright Treaty.